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09/674,052	10/25/2000	Ludwig Busam	CM1778Q	9275

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL BUSINESS CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/674,052  
Filing Date: October 25, 2000  
Appellant(s): BUSAM ET AL.

**MAILED**

**OCT 23 2006**

**Technology Center 2100**

\_\_\_\_\_  
George Leal  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 27, 2006 appealing from the Office action mailed May 19, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,437,653

GILMAN et al.

8-1995

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 – 4 and 6 – 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilman et al. (US 5,437,653).

Regarding claim 1, Gilman et al. (hereinafter “Gilman”) discloses a laminate web comprising a liquid pervious first material (12) and a liquid pervious second material attached to the first material (20, 22,24), characterized by the first and second material having the claimed effective open area (col. 3, lines 32 – 34) and a plurality of apertures with the claimed effective size (col. 3, lines 58 – 63), said apertures of the second

material being aligned with the apertures of the first material (col. 5, lines 9 – 11), wherein said second material has a hydrophilicity which is greater than the hydrophilicity of the first material (col. 6, lines 1 – 3) wherein a plurality of fibers of the first material and a plurality of fibers of the second material are substantially fused together about the apertures (col. 5, lines 26 – 27 and 30 – 31), wherein said first material has a first bonded area and said second material has a second bonded area and wherein the second bonded area is greater than the first bonded area as set forth in figure 1.

Initially, the examiner refers to MPEP 2113 which states:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

The limitation requiring the plurality of materials to be substantially fused together about the aperture is a product by process limitation and only the end structure of the article is given patentable weight.

Secondly, with reference to the bonded areas of the materials, the examiner's position is if the entire bonded area (the length of the article as set forth in col. 3, lines 55 – 56) of the second material (20) is compared to only the outermost portion (i.e., the area to the left of the article in figure 1 where reference character "18" is located) of the bonded area of the first material (12), the second material (20) has a bonded area greater than a bonded area of the first material.

With reference to claim 3, Gilman discloses a laminate web wherein the first material (12) is a nonwoven web as set forth in col. 2, line 68 to col. 3, line 6.

As to claim 4, Gilman discloses a laminate web wherein the second material (20) is a nonwoven web as set forth in col. 4, lines 47 – 48.

Regarding claim 6, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 15 percent as set forth in col. 3, lines 32 – 34.

Regarding claim 7, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 20 percent as set forth in col. 3, lines 32 – 34.

Regarding claim 8, Gilman discloses a laminate web wherein the first and second material each have a plurality of apertures with a size of at least 1.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 9, Gilman discloses a laminate web wherein the first and second materials have a plurality of apertures with a size of at least 2.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 10, Gilman discloses a laminate web wherein the second material has a width greater than that of the first material as set forth in figure 1.

If the entire width (band as shown in figure 1) of the second material (20) is compared to only the outermost width (i.e., the area to the left of the article in figure 1 where reference character “36” is located) of the first material (12), the second material (20) has a width greater than that of the first material.

Regarding claim 11, Gilman discloses a disposable absorbent article comprising a liquid pervious topsheet comprising the laminate web as set forth in the abstract and in col. 3, line 30 to col. 4, line 47.

As to claim 12, Gilman discloses a disposable absorbent article further comprising a backsheet (16) joined to the topsheet (col. 7, lines 51 – 52), and an absorbent core (22) positioned between the topsheet and the backsheet as set forth in figure 1.

#### **(10) Response to Argument**

In response to the applicant's arguments that Gilman does not teach the second material to have a hydrophilicity greater than the first material, the examiner disagrees.

Gilman discloses in col. 3, lines 6 – 8 that suitable materials for the first material (12) include polyester, polypropylene, and polyethylene, all of which are hydrophobic. Gilman also discloses in col. 6, lines 1 – 3 that suitable materials for the second material (22, 24) are hydrophilic, thereby providing a second material having a hydrophilicity which is greater than the hydrophilicity of the first material.

With reference to the applicant's argument that Gilman does not teach the second material having apertures, the examiner disagrees. The examiner contends that the second material is apertured as taught by Gilman in col. 5, lines 30 – 31. Gilman discloses that layer 20 is apertured. Layer 20 is part of the second material as previously recited in the rejection of claim 1. Likewise, col. 5, lines 22 – 31 recite that

the first material and the second material may be apertured simultaneously in a single operation, thereby a first and second material with aligned apertures.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a percentage of fiber to fiber bonds in a first material and a percentage of fiber to fiber bonds in a scone material) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 1 requires the first material to have a first bonded area and the second material to have a second bonded area and the second bonded area to be greater than the first bonded area. The examiner contends that any bonded portion of the first material may be considered a first bonded area and any bonded portion of the second material may be considered a second bonded area. Therefore, if the examiner considers a larger bonded portion of the second material as the second bonded area than that of the first material, then Gilman meets the claimed limitation.

Additionally, the examiner notes that the claim element referring to a "bonded area" is not considered a product by process limitation. The examiner considers the manner in which the area is bonded (i.e. fused) as a product by process limitation. The fact that the area is bonded by a particular method is not a determination of patentability. The Gilman reference provides a bonded structure, as does the claimed invention, and the fact that the claimed invention refers to the product as being fused,



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the examiner maintains that the limitation requiring a fused product is unpatentable because both products are ultimately bonded and the instant applicant does not provide any rationale and/or unexpected result associated with the fusing of the product in relation to any other method of bonding the article.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the meaning attributed to the term "width" in the application) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 10 requires a first width and a second width. The examiner contends that any width may be considered a first width and any other width may be considered as a second width. Therefore, if the examiner considers a second width to be larger than a first width, Gilman meets the claimed limitation.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

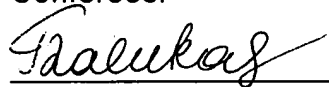
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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Michele Kidwell

Conferees:

  
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Tatyana Zalukaeva

  
\_\_\_\_\_

Nicholas Lucchesi